

Decision **PROPOSED DECISION OF ALJ YACKNIN**
 (Mailed on 8/21/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Applying the Market Index Formula and As-Available Capacity Prices adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities beginning July 2003 and Associated Relief.

Application 08-11-001
 (Filed November 4, 2008)

And Related Matters.

Rulemaking 06-02-013
 Rulemaking 04-04-003
 Rulemaking 04-04-025
 Rulemaking 99-11-022

DECISION DENYING PETITION TO MODIFY DECISION 10-12-035

Summary

This decision denies the petition of the Energy Producers and Users Coalition for modification of Decision 10-12-035.

1. Background

Decision (D.) 10-12-035 approved the “Qualifying Facility and Combined Heat and Power Program Settlement Agreement” (Settlement) entered into by Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), The Utility Reform Network (TURN), the California Cogeneration Council (CCC), the Independent Energy Producers Association (IEP), the Cogeneration Association of California (CAC), the Energy Producers and Users Coalition (EPUC), and the Division of

Ratepayer Advocates (DRA) (collectively, Settling Parties). The Settlement provides a detailed and comprehensive framework for a Qualifying Facility and Combined Heat and Power Program (QF/CHP Program) in California. Among other things, the Settlement provides several power purchase agreement (PPA) options with Commission-approved capacity prices and short-run avoided cost (SRAC) energy prices.

By this petition, EPUC proposes that the Commission modify D.10-12-035 to declare that these SRAC-based PPAs are part of the State's implementation of the Public Utilities Regulatory Policies Act of 1979 (PURPA), so as to clarify the obligations of combined heat and power (CHP) facilities under the laws and regulations governing wholesale pricing. A qualifying facility selling power pursuant to a PPA under an implementation plan does not need to obtain market-based rate authority from the Federal Energy Regulatory Commission (FERC). EPUC seeks a Commission finding that qualifying facilities are exempt from having to obtain market-based rate authority from FERC for the SRAC-based PPAs provided under the Settlement.

CCC filed a response largely supporting EPUC's petition; SCE, PG&E and SDG&E jointly filed a response opposing EPUC's petition; and EPUC filed a reply to those responses.

By ruling dated July 15, 2014, the administrative law judge (ALJ) solicited comment regarding the effect of the grant or denial of the petition for modification on the contracting parties' rights and obligations under the settlement PPAs and on ratepayers. On July 31, 2014, EPUC and CCC jointly filed comments, as did SCE, PG&E and SDG&E.

2. Discussion

The issue of whether qualifying facilities are exempt from having to obtain market-based rate authority from FERC for power sold under the SRAC-based PPAs provided under the Settlement is not for this Commission to decide. Our opinion on the issue would not provide any declaratory relief: it would not be legally binding or preempt a FERC finding to the contrary.

EPUC asks us to elucidate our intent with regard to this issue when we approved the Settlement. However, as EPUC and CCC concede in their comments, the issue does not impact the rights and obligations of contracting parties under the SRAC-based PPAs, it does not impact the rights and obligations of the settling parties under the Settlement, and it has no impact on California ratepayer costs. There is therefore no reason that the Commission would have had any intent with regard to this issue, one way or another, when we approved the Settlement.

We do not have the authority to issue a declaratory judgment or cause to issue an advisory opinion on the issue. The petition is denied.

3. Comments on the Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. EPUC and SCE filed comments on September 10, 2014. We made no revisions to the ALJ's proposed decision.

4. Assignment of Proceeding

Michael Peevey is the assigned Commissioner and Hallie Yacknin is the co-assigned ALJ in these proceedings.

Findings of Fact

1. The issue of whether qualifying facilities are exempt from having to obtain market-based rate authority from FERC for power sold under the SRAC-based PPAs provided under the Settlement does not impact the rights and obligations of contracting parties under the SRAC-based PPAs, it does not impact the rights and obligations of the settling parties under the Settlement, and it has no impact on California ratepayer costs.

Conclusions of Law

1. A Commission decision on the issue of whether qualifying facilities are exempt from having to obtain market-based rate authority from FERC for power sold under the SRAC-based PPAs provided under the Settlement would not be legally binding or preempt a FERC finding to the contrary.

2. We do not have the authority to issue a declaratory judgment or cause to issue an advisory opinion on the issue.

3. The petition should be denied.

O R D E R

IT IS ORDERED that:

1. The petition is denied.
2. Application 08-11-001 and Rulemaking (R.) 06-02-013, R.04-04-025, R.04-04-003 and R.99-11-022 are closed.

This order is effective today.

Dated _____, at San Francisco, California.